

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

**MAGDALENE M. SMOOT and
RYAN M. SMOOT,**

Plaintiffs,

v.

**MAZDA MOTOR OF AMERICA, INC. and
THE TOKIO MARINE & FIRE INSURANCE
CO., LTD.,**

Defendants.

Case No. 02-cv-159-DRH

ORDER

HERNDON, District Judge:

On August 31, 2005, Defendants filed a Motion to Dismiss Plaintiffs' Claims in the instant case. (Doc. 57.) The gist of Defendants' motion is that since the Court previously issued an order excluding Plaintiffs' expert witness from the case (Doc. 56), Plaintiffs' claims can no longer be proven. Therefore, regardless of any possible scheduling deadlines that may exist in this case, the Court feels that Defendants' motion should be properly addressed by Plaintiffs.

As such, Court *sua sponte* **GRANTS** Plaintiffs an extension of time to respond to Defendants' Motion to Dismiss. (Doc. 57.) Plaintiffs have until **Friday, October 28, 2005**, in which to file their response with the Court. If Plaintiffs fail to

respond, the Court, upon consideration of Defendants' motion, shall assume that Plaintiffs concede to the merits of such motion.

IT IS SO ORDERED.

This 14th day of October, 2005.

/s/ David RHerndon
United States District Judge